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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6912 of 1996

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements? - Yes.

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2. To be referred to the Reporter or not? - No.

3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

GUJARAT TRADE UNION MANCH

Versus

GUJARAT STATE TEXTILE CORPORATION

Appearance:

MR MUKUL SINHA for Petitioners.

MR KIRIT N RAVAL, Advocate, with MRS. P.J. DAVAWALA, Advocate, for respondent No.1.

MR SN SHELAT , ADDL. ADVOCATE GENERAL, with Mr.Dhaval C. Dave, Addl. Government Pleader, for respondent No.2.

MR B R SHAH, Senior Advocate, with MR DS VASAVADA for Respondent No. 3

CORAM : THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER
Date of decision: 08/11/96

C.A.V. JUDGEMENT : (Per G.D. Kamat, C.J.)

Rule. By consent of the Advocates appearing for the parties, who waive service of rule on behalf of the respective respondents, taken up for final hearing.

This petition is instituted by Gujarat Trade Union Manch and by Gujarat Mazdoor Sabha against the Gujarat State Textile Corporation, State of Gujarat and Textile Labour Association, claiming public interest and praying therein for an appropriate writ, direction and / or order for quashing and setting aside a Settlement-cum-Award dated September 3, 1996 and all other similar Awards and consequential actions, being contrary to law, null and void. A prayer is also made to declare that the State Government and / or the Textile Corporation has no power, authority or jurisdiction to impose conditions in the impugned agreement dated 31st of August, 1996 and the Industrial Court has had no jurisdiction to pass the Award on the basis of such an Agreement. The thrust of the petition, therefore, is that the Agreement as well as the Award are illegal, unconstitutional and without any legal effect whatsoever.

By a draft amendment moved, the constitutional validity of Sections 66, 78(1)(A)(C), 95, 113, 115A read with Item No.(7)(i) of Schedule III of the Bombay Industrial Relations Act, 1946 is also challenged on the grounds that those provisions are inconsistent with and repugnant to the provisions of Section 25-O of the Industrial Disputes Act, 1947 and further being violative of Articles 14, 21 and 254 of the Constitution of India. The further prayer, therefore, is to restrain the respondents from enforcing and implementing the Agreement dated 31st of August, 1996 and the Award dated 3rd September, 1996 and from taking any action thereunder.

Tersely put, the case of the petitioners is that the first petitioner is a Manch, formed by several Central Trade Unions, like, INTUC, AITUC, GITU, GSTC Officers' and Technicians' Union, NTC Officers' and Technicians' Union, etc. It is averred that the object of the Manch is to campaign against closing down of textile mills owned, managed and run by the Gujarat State Textile Corporation (for short "GSTC"). It is claimed

that petitioner No.2 is a registered Trade Union, having members both in the Engineering as well as Textile Industries and is directly interested in the outcome of the present petition.

Gujarat State Textile Corporation is an `Authority' under Article 12 of the Constitution of India and, therefore, partakes the character of Government, which, at present, runs several textile mills taken over by the Government of Gujarat under the Textile Mills (Special Provisions) Act, 1985. It is the case of the petitioners that respondent No.3-Textile Labour Association is a party to the Agreement, entered into between GSTC and Textile Labour Association, which has finally culminated in an Award made by the Industrial Tribunal, Gujarat State at Ahmedabad, in Submission Application (IC) 1 of 1996 dated September 3, 1996. A so-called Voluntary Retirement Scheme was notified by the first respondent Corporation for the workers of the Mills owned, managed and controlled by it. This Scheme is held out to be contrary to law and against the provisions of the Industrial Disputes Act by the petitioners as being arbitrary, and what is more, unreasonable. According to the petitioners, it adversely and prejudicially affects innumerable workmen, who are not in a position to protect their rights and that the respondent-Corporation clearly intends to close down textile mills under the so-called Voluntary Retirement Scheme, which, in substance and reality, is nothing but compulsory termination of services of the workmen by bypassing and not following the provisions of Section 25-O of the I.D. Act and hence, the same is illegal and unlawful. It is asserted that the petitioners, with a view to protect and safeguard the rights of workmen, are, therefore, constrained to file the present petition as Pro Bono Publico. It is otherwise set out that prior to 1985, several mills became sick and they were thus closed down rendering thousands of workmen unemployed. With a view to rehabilitate the textile units, the Government of Gujarat promulgated an Ordinance in the year 1985 to acquire all textile mills, which were lying closed. The Ordinance was subsequently enacted as the Act, known as "Industrial Mills (Special Provisions) Act, 1985", with two Objects, viz. :-

(i) To ensure maintenance of production of cloth; and

(ii) To protect the workmen employed in textile mills.

After taking over 15 textile mills, several textile mills

were restarted by the first respondent-Corporation, but as the affairs of those units were not properly managed, it resulted into heavy loss. According to the petitioners, a Reference was, therefore, made to the Board for Industrial and Financial Reconstruction ("BIFR", for short) and the BIFR ordered winding up of those mills. It is claimed in the petition that there are about 17000 workmen presently employed by the first respondent Corporation in various mills owned and managed by it and as and when the textile mills are to be closed, it would seriously prejudice the rights of those employees. It is in these circumstances that the petitioners have challenged the vires of Section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 by filing a separate petition, being Special Civil Application No.6837 of 1996, which is pending.

To make the challenges in this petition good, Mr.Sinha, learned counsel for the petitioners has raised following contentions :-

(1) The provisions of Sections 66, 78(1)(A)(C), 95, 113 and 115A and Item No.(7)(i) of Schedule III of the BIR Act, 1946 are ultra vires Section 25-O of the Industrial Disputes Act, 1947 as also ultra vires Articles 14, 21 and 254 of the Constitution of India;

(2) A Settlement said to have been arrived at between the Textile Labour Association and Gujarat State Textile Corporation is illegal, unlawful, inequitable and prejudicial to the rights and interests of the workmen;

(3) An Award passed by the Industrial Court, Gujarat State, at Ahmedabad, on 3rd September, 1996 pursuant to the compromise arrived at between Textile Labour Association and GSTC is illegal, unlawful and cannot be enforced;

(4) Neither respondent No.1 nor respondent No.2 has power, authority or jurisdiction to enter into an agreement with respondent No.3 by way of settlement or otherwise and thereby, depriving the members of the petitioner-Association of the rights available to them;

(5) Respondent No.3 is not a representative Union and it had no authority to enter into compromise or settlement with respondent No.1 or respondent No.2;

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(6) Action of the respondents is mala fide and malicious. There was unholy haste on the part of the respondents in entering into agreement and getting the settlement converted into Award. The terms and conditions of the so-called settlement and in particular Clauses (2), (11) and (12) are in the nature of unfair labour practice. No choice was left to the workmen and they were forced to sign the settlement. There is coercion and threat. Resignations are not voluntary.

It is upon these contentions and grounds the action is said to be illegal and ultra vires.

These petitions are vehemently opposed on behalf of the respondent No.1. Mr.Kirit Raval, for the respondent-Corporation, while supporting the action, has urged that it is not possible to run textile units and, therefore, a Reference was made to BIFR and after careful consideration of facts and circumstances, a recommendation was made to close down the Units and accordingly, a fair action was taken. It was submitted by him that in reaching the decision to settle the matter, the larger interest of workers was taken into consideration and that is how a settlement was entered into between the workmen and the third respondent-Textile Labour Association, which is otherwise valid and legal and which finally culminated in an Award. He, therefore, canvassed that petition is liable to be dismissed.

Shri B.R. Shah, learned counsel appearing for respondent No.3-Asosocaiton, also supported the impugned action and relying upon the affidavit of Mr.Joshi, Legal Incharge and Executive Member of the Association, submitted that considering the overall circumstances,the action taken is more beneficial to the workmen and there is no scope for questioning the Scheme envisaged, which culminated into an Award. He urged that the Agreement was voluntary, lawful and what is more, equitable to the workmen.

In opposing the petition, Mr.Shelat, learned Additional Advocate General, submitted that a stage had come, where the Government was forced to prevent huge financial loss year by year. According to him, the financial burden was unbearable as far as the State of Gujarat is concerned and, therefore, the settlement has

been fairly reached. He says that more than 90% of the workmen agreed and that is how the package deal has been arrived at. He contended that there is no `closure', as contemplated by the petitioners and the provisions of the BIR Act or the Industrial Disputes Act have had no application. In so far as the validity of BIR Act is concerned, Mr.Shelat submitted that, in the instant case, the question does not arise and the Court need not decide that question in the present petition.

The question indeed arises whether in the facts and circumstances of this case, a case has been made out by the petitioners so as to exercise the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and that too, treating this petition as and by way of public interest litigation. In our opinion, there is no justification for doing so.

Qua the constitutional validity of Sections 66 and 78(1)(A)(C) of the BIR Act is concerned, it was contended that they are ultra vires Article 254 of the Constitution of India. According to the learned counsel for the petitioners, the provisions are also repugnant to Section 25-O of the Industrial Disputes Act, 1947 and for that matter, Section 113 of the BIR Act read with Item (7)(i) of Schedule III is also ultra vires and unconstitutional in as much as it confers blanket and uncontrolled power on the part of the Government and the Government is enabled to add or delete any Entry in the said Schedule in respect of closure and compensation. It was, therefore, pleaded that such a piece of excessive delegation of power to the Executive by the Legislature is unconstitutional. An argument was also advanced that Industrial Disputes Act is a special legislation governing relationship between the employer and the employee and such a relationship must be governed only under that Act and, therefore, no action can be taken either under the Companies Act, BIR Act, Sick Industrial Companies (Special Provisions) Act, or any other law. For this purpose, reliance was placed on the decision of a learned single Judge of the High Court at Bombay in the decision of Bombay Metropolitan Transport Corporation Limited v. Employees of the Bombay Metropolitan Transport Corporation Limited, 69 Company Cases 465.

In answer, the counsel for the respondents submitted that, in the present case, the question of constitutional validity of any law does not arise nor the Court is required to enter into larger questions. It was strongly contended that the settlement had been arrived at between the Corporation and the Association, which was

accepted by majority of workmen. The said settlement was produced before the Industrial Court, which made an Award on the basis of the settlement and which cannot be now brushed aside. In the light of those facts, it is urged that there is no scope to invoke the provisions of Section 25-O of the Industrial Disputes Act on the ground that the action amounts to retrenchment. It was contended that whether or not Section 25-O of the I.D. Act is a special or general legislation is not necessary to be decided as it pales into a mere academic issue and, therefore, such a question does not arise and the question of court expressing any opinion on the same equally does not arise.

In any case, it was pointed out that the submission that Section 25-O of the I.D. Act is a special legislation, whereas BIR Act, Companies Act, Sick Industrial Companies (Special Provisions) Act, 1985 are general legislations is ill-founded. It was forcefully contended that Industrial Disputes Act is a general law and other statutes have been enacted with a view to meet particular types of situations and hence, they are special legislations. In so far as reference to the decision of the learned single Judge of the Bombay High Court in Bombay Metropolitan Transport Corporation Limited is concerned, it was pointed out that the decision rendered is no longer a good law as in appeal, a Division Bench of the same High Court has reversed the same. The appellate decision in Bombay Metropolitan Transport Corporation Limited v. Employees of the Bombay Metropolitan Transport Corporation Limited, is reported in 71 Company Cases 473.

We see not only considerable force but merit in the argument of the respondents. In our opinion, the package deal offered by the first respondent Corporation was in consultation with the second respondent State Government and the same has been accepted by the majority of the workmen. The voluntary settlement has been arrived at and signed by all parties. Therefore, an application was made to the Industrial Court and the settlement has been made into an Award of the Court. In view of that fact, in our judgment, the larger question regarding constitutional validity of the provision of BIR Act does not arise in the present case and we need not express our opinion thereon.

Coming to the affidavit-in-reply filed on behalf of the respondent No.3, it is stated that the Corporation has sustained financial loss, approximately Rs.515/crores upto March, 1995, which has now reached Rs.610/crores in

March, 1996. Mr.Shelat, learned Additional Advocate General, stated that there is a recurring loss of Rs.5 crores per month and the total loss to the Exchequer is to the extent of Rs.611/- crores. He also stated that the GSTC has become a sick industrial company and, therefore, a Reference was made to BIFR in June, 1993. All efforts were made for revival of Sick Industrial Mills by BIFR, but they did not meet with any success. The BIFR was, therefore, left with no alternative but to recommend winding up of GSTC. The resultant effect naturally would be that all officers and employees are bound to be discharged on closure of textile mills. Taking into consideration these facts and with a view to protect and safeguard interest of workers and the State economy, attempts were made and the third respondent-Association was requested to arrive at an appropriate settlement so that the workers get terminal benefits at the earliest. The Government also agreed to such a formula and as a special measure, and in the light of the Directive Principles of State Policy, a package deal was brought into existence, under which various benefits are granted to the workmen. The assertion of the third respondent that in case of ordinary closure in accordance with law, it was doubtful whether employees would get such benefits, which they are now getting under the settlement, which has become the Award of the Industrial Court seems to be justified as there are innumerable cases where workers do not get their terminal benefits for years and years and for decades. A Chart is annexed to the affidavit-in-reply, pointing out as to how the employees are availing benefits. It is also suggested and to some extent, justifiably, that those workmen were not entitled to all such benefits. The State of Gujarat thought it fit to grant some additional benefits with a view to minimize the hardship of the workmen.

It is otherwise common ground that out of about 14000 workers more than 13000 have accepted the settlement and have shown their readiness and willingness to abide by the Agreement. It is also common ground that majority of the workmen have already received compensation by now and chosen their own path. The petitioners are not recognized Unions and, admittedly, they do not have majority of workers with them and regard being had to the fact that majority of the workers having accepted the package deal pursuant to the settlement, which has become Award, in our opinion, it is impermissible to allow the minority to challenge the same and that too, in the nature of public interest litigation.

By now it is clear having looked at the figures, which have been furnished along with the affidavit-in-reply, that more than 90% of the workmen have agreed to such a settlement and the settlement has been made an Award by the Industrial Court. At the time of the hearing of the petition, we were told across the Bar that out of total workers of 13974, 13150 workers have already signed and accepted the settlement. Thus, it is clear that a thin minority of 824 workers are against the settlement. In these circumstances, in our opinion, this is not a fit case, where, in exercise of extraordinary jurisdiction, any interference is called for and / or justified.

Mr.Sinha indeed contended that voluntary resignation said to have been given by the workmen, though by majority of them, is not really `voluntary', as understood in law, for, according to him, virtually it is a closure. He says that first the decision was taken to close down and wind up textile mills contrary to law. He also points out that there was undue haste on the part of the Authority in getting BIFR proceedings culminating into a final order and thereafter, under coercion, duress and compulsion, resignations were sought. These resignations cannot come in the way of the petitioners Unions in challenging the validity thereof, asserts Mr.Sinha. For that matter, he also drew our attention to various clauses of the Agreement. In that, he submitted that 2% of the benefits are sought to be deducted in favour of third respondent Association, which is illegal. He stated that the State Government and the Central Government had made declaration from time to time that all sick units will be revived and no workmen would be made unemployed and that rehabilitation scheme is prepared only with that object in mind and, therefore, it was clearly incumbent on the respondents to run the so-called sick undertakings. He, therefore, says that the respondents cannot be permitted to close down the Mills under the excuse that the units were and are running in losses and that the BIFR had passed an order of winding up the Companies. Considering the facts and figures, we are, however, of the view that action of the respondent-authorities cannot be termed either as arbitrary or unreasonable. On the contrary, we are satisfied that in spite of efforts made, the Units could not be revived. It is common ground that majority of the mills were already lying closed and the State Government was made to pay idle wages to the workmen. The units could not be revived and the loss incurred by the Corporation accumulated day by day, running into crores

of rupees. When proceedings under BIFR Act were initiated, the Board has taken the view that there is no alternative but to wind up the units. Needless to say that the decision of the Board is that of an Expert Body. Ordinarily, a decision of such a Body is not interfered with unless it is palpably wrong or is such that no reasonable man of ordinary prudence would reach such a decision. On the facts and circumstances of this case, we are satisfied that the Expert Body could not have reached any decision other than the one reached by them. Seen in this light, the action taken does not seem to be unlawful or otherwise arbitrary and / or unreasonable. Respondent No.3-Association is a representative Union of the majority and the majority of the workers have already accepted the proposal and settlement and have, that way, accepted the compromise. We have also seen and satisfied ourselves that the terms and conditions incorporated in the compromise are not adverse to the interests of the workmen. On an overall assessment of the situation, we also find that the agreement seems to be fair and what is more, when the parties approached the Industrial Court, the Court put its seal and the settlement became an Award of the Industrial Court. A clear inference, therefore, arises that the Industrial Court was satisfied about the legality and validity of the settlement or the package deal. There is another way of looking at the whole matter. We are told by Mr.Shelat that the State Government has to disburse Rs.5 crores per month and the large part of this amount has to be disbursed as and by way of idle wages to workers because the mills are lying closed. In any case, therefore, in public interest, the State Government cannot be made to suffer substantial sum of Rs.5 crores per month from Public Exchequer. In our judgment, therefore, this is not a fit case, where interference is required in the extraordinary jurisdiction under Article 226 of the Constitution of India in public interest litigation.

Though we are dismissing this petition, in our view, some directions are required to be given so as to safeguard the interest of the workers, who have so far not taken benefit of the Settlement-cum-Award dated 3rd September, 1996 and who may yet choose to do so. Mr.Sinha, learned counsel appearing for the petitioners, had himself asserted at the time of the arguments that he will have no objection if workmen, on their own, opt for this package deal and his thrust was that it should not be forced upon the unwilling workers. We are sure that if workers do not want to avail of the benefits of the Award, they can surely seek redress in an appropriate forum, as advised. The fact, however, remains that under

Clause (11) of the Settlement and Award, dated 31st August, 1996 / 3rd September, 1996, it was made a condition that those workers, who want to resign to get the benefit under the Award, must do so on or before 12th September, 1996. Indeed this petition was instituted prior to that date. We did not grant interim relief, making it clear that at the time of final hearing, appropriate equitable relief could be considered even in the event petition is to be dismissed. It may be possible that some of the workers may yet opt for the package deal. We have, therefore, no difficulty in directing respondent No.1-Corporation to accept resignation until 10th December, 1996 and afford to such workers the benefit under the Award in the event they so

choose and in no event, the benefit shall be denied to them if they come forward with their applications on or before 10th December, 1996. This position will also be available to those who had applied but has so far not accepted the payment under the Award.

For the foregoing reasons and subject to the aforeaid directions, the petition is dismissed. Rule is discharged with no order as to costs.

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(apj)